

Before the
Federal Communications Commission
Washington, DC

In the Matter of) MM Docket No. 00-161
)
Amendment of Section 73.202(b),)
Table of Allotments,) RM-9929
FM Broadcast Stations)
(Fort Bridger, WY and Woodruff, UT))

RECEIVED

MAY 15 2001

To: Chief, Allocations Branch

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SUPPLEMENTAL COMMENTS

KGNT Inc., by its attorney, hereby submits its supplemental Comments with regard to the *Notice of Proposed Rule Making*, DA 00-2018, issued with respect to the proposal of M. Kent Frandsen ("Frandsen") to reallocate Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah. With respect thereto, the following is stated:

Frandsen currently is the permittee of Station KNYN(FM), Fort Bridger, Wyoming. In his Petition for Rule Making, Frandsen has requested the reallocation of Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah, as its first local transmission service. Frandsen claims that the proposed reallocation would be in the public interest. As primary elements of his reallocation request, Frandsen argued (1) that the existing community, Fort Bridger, is not a "community," (Reply Comments at 1-2) (2) Fort Bridger does not have greater population than Woodruff (the proposed new community) (Reply Comments at 2 n.1); and (3) Fort Bridger is not a "census designated place" recognized by the United States Census Bureau. *Id.*

All three claims are incorrect. First of all, the Commission recognized in its *Report and Order*, 4 FCC Rcd 5395 (Chief Allocations Branch 1989), that a channel could be allocated to Fort Bridger, Wyoming, "as that community's first local FM service." Frandsen states no persuasive

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reason why the Commission should reverse its earlier determination, and suddenly declare that Fort Bridger lacks community status. All Frandsen stated initially with regard to Fort Bridger to defeat Fort Bridger's current community status was that "Fort Bridger is not an incorporated city and has no elements of a community." *Petition for Rule Making* at 3. Later, in his *Reply Comments*, without attaching any Declarations from local residents, he stated further that Fort Bridger "has no local government or civic activities and little or no commercial activity." *Reply Comments* at 2. These assertions hardly rise to the level of weighty "evidence" necessary for the Commission to reverse its earlier conclusion of community status. In contrast, as shown in the history of Fort Bridger attached hereto as Attachment 1, the existence of the community of Fort Bridger is both long-standing, and historically significant. The community has grown around the Fort Bridger State Historical Site, and today exists as a trading center for the surrounding farming community. Attachment 1.

Second, as seen in Attachment 2, contrary to Frandsen's assertions, Fort Bridger is indeed a "census designated place." Therefore, it fits within established Commission criteria justifying "community" status. *Hannah's Mill, Milledgeville and Perry, GA*, 6 FCC Rcd 3753, ¶ 9 (Chief, Allocations Branch 1991) ("There is a strong presumption that a CDP is a community for allotment purposes"); *Cleveland and Ebenezer, MS*, 10 FCC Rcd 8807, ¶ 6 (Chief, Policy and Rules Div. 1995) ("The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census").

Finally, the population within the Fort Bridger census designated area is indeed greater than that of Woodruff, Wyoming, the proposed new community of assignment. As seen in

Attachments 2, the year 2000 population, which only recently became available, for the Fort Bridger CDP, is 400 persons. In contrast, as seen in Attachment 3, the Year 2000 population for Woodruff, Utah, is only 194 persons. Under this criteria, as between two communities (Fort Bridger and Woodruff) that have no existing service, the community of Fort Bridger is the preferred community for retention of an allotment.

Once again, the Commission will allow an allotment to be reassigned to a new community of license only where the new allotment is mutually exclusive with the current allotment, and the reallocation will result in a preferential arrangement of allotments. *See, e.g., Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). The Commission's has an established allotment criteria which was set forth initially in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982), which establishes the following allotment priorities:

- (1) first full-time aural service
- (2) second full-time aural service
- (3) first local service
- (4) other public interest matters

In order to be granted, a proposed change of communities of license must result in a preferential arrangement of allotments. In order to determine whether a proposal will result in a preferential arrangement of allotments, the FCC compares the existing and proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992). *Amendment of the Commission's Rules Regarding*

Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, ¶ 25 (1989).

In this case, that test cannot be satisfied. The allotment currently is assigned to Fort Bridger. The community has assigned to it no other aural service. In contrast, Frandsen is seeking to reallocate the channel to the new, smaller community of Woodruff. This clearly would not result in a preferential arrangement of allotments, insofar as it will deprive the larger community of Fort Bridger of its only local allotment (Priority "3").¹ Moreover, as stated previously, no benefit to the public appears to exist, insofar as Frandsen claims that the reallocation will not involve a change of transmitter sites (Petition at 2), and potentially will allow white and grey areas to be deprived of their only local aural service.

¹ In the cases cited by Frandsen, the Commission recognized its continued responsibility to only reallocate a channel to a community that resulted in a "preferential arrangement of allotments." In the cases of *Pawley's Island and Atlantic Beach, SC*, 8 FCC Rcd 8657 (1993), and *Glencoe and Le Sueur, MN*, 7 FCC Rcd 7651 (1992), the community's sole allotted transmission service was not being removed. Thus, the test easily was satisfied in those cases. In the case most similar to the case at bar, in *Sanibel and San Carlos Park, FL*, 10 FCC Rcd 7215 (1995), as here, a community's sole transmission service was being removed. The Commission stated:

Upon review of this proposal, we believe that the reallocation of Channel 253A from Sanibel, Florida, to San Carlos Park, Florida, will result in a preferential allotment based on the above information.... In addition, the reallocation of Channel 253A from Sanibel (population 5,468) to San Carlos Park (population 11,785) will provide the larger community with a first local transmission service.

Id. at ¶ 9. Again, in this case, Woodruff is the *smaller* community. Thus, the test is *not* satisfied in this case.

WHEREFORE, it is respectfully requested that the proposal contained in the Petition for Rule Making filed by M. Kent Frandsen be denied, and that the information and arguments presented herein be fully considered by the Commission.

Respectfully submitted,

KGNT, INC.

By: 

Dan J. Alpert

Its Attorney

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May 15, 2001

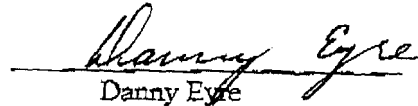
ATTACHMENT 1

DECLARATION

I, Danny Eyre, hereby state as follows:

I am a resident of the Fort Bridger area. As seen by the attached, Fort Bridger has a rich history, commencing with the establishment of a fort by Jim Bridger in 1843 as an emigrant supply stop along the Oregon Trail, and later evolving into a military outpost in 1858, and now a community which, including the surrounding area designated by the U.S. Census Bureau, now numbers several hundred people. Today the community serves as the site of residential housing, a trade center for the local farming community, and of course as the site for the Fort Bridger State Historical Site, which includes a park and museum.

I hereby state under penalty of perjury that the foregoing is true and correct.


Danny Eyre

Signed and dated this 5th day of May, 2001.

Fort Bridger State Historic Site

P.O. Box 35
Fort Bridger, WY 82933
(307) 782-3842



Glimpse at the History of Fort Bridger

"I have established a small fort, with a blacksmith shop and a supply of iron in the road of the emigrants on Black Fork of Green River, which promises fairly..."



Thus spoke Jim Bridger in a letter he dictated to would-be suppliers in 1843. While that small fort only lasted a little more than a decade, Bridger's words did prove to be prophetic. Not only did the location he established promise fairly," it proved to be one of the main hubs of westward expansion: from mountain men and Indians to emigrants and Mormon pioneers, to the U.S. Army, the Pony Express, the Overland Stage and the Union Pacific Railroad. If it happened in the opening of the American West, it affected, or was affected by, Fort Bridger.

Established by Jim Bridger and Louis Vasquez in 1843 as an emigrant supply stop along the Oregon Trail, it was obtained by the Mormons in the early 1850s, and then became a military outpost in 1858. In spite of temporary times of abandonment during the Civil War and then again during the late 1870s, Fort Bridger remained U.S. Government property until 1890. After the post was abandoned, many of the buildings constructed by the army were sold at public auction and moved off of the fort grounds to become private homes, barns, bunkhouses and the like. For a time, the buildings that remained were allowed to fall into disrepair. But after a period of neglect, various groups and individuals took interest in preserving and restoring what remained of old Fort Bridger. In 1933 the property was dedicated as a Wyoming Historical Landmark and Museum.



Today, Fort Bridger is a state historic site and administered by Wyoming State Parks & Historic Sites, Division of Parks & Cultural Resources. Wyoming Department of State Parks & Cultural Resources.

Travel Directions & Park Overview

Fort Bridger State Historic Site sits three miles off Interstate 80, exit #34, approximately 30 mile east of Evanston, Wyoming. The snow capped Uinta Mountains are visible to the south and a channel of the black Fork River flows through the 38 acre site. At 6,675 feet above sea level, the nights are always

cool and day time temperatures are rarely uncomfortably hot. In the vicinity are three R.V. campgrounds and two motels. There are several restored historical buildings from the military time period, a



reconstruction of the trading post operated by Jim Bridger, and an interpretive archaeological site containing the base of the cobble rock wall built by the Mormons during their occupation of the Fort. All of these locations are signed in Braille. In addition, a museum containing artifacts from the various different historical time periods is housed in the 1888 stone barracks building. There are gift shops in both museums and the reconstructed trading post-both of which accept major credit cards.

Current Park Fee Information

Accommodations & Camping

There is no camping available at Fort Bridger. The nearest State Park location to camp is Sinks Canyon State Park

Annual Events

Easter Egg Hunt Held the Saturday before Easter,
Sponsored by the Lymans Lions Club

Lyman Elementary History Fair Project
Winners Display during May

Memorial Day Flag Raising Ceremony, presented
by the VFW, Fort Bridger staff and volunteers

Living History Program June through Labor Day

Wednesday night Lectures Mid June through mid
August. **Free** Sponsored by the Fort Bridger
Historical Association.



June 9th-Lynne Swanson, Wyoming Woman Homesteader

June 16th.- Gene Bryan, John Colter: Mountain Man or Maniac?

June 23rd. - Dudley Gardner, The Cherokee Trail and the Archeological Record at Fort Bridger

ATTACHMENT 2

U.S. Census Bureau

American Fact

Main | Search | Feedback | FAC

Basic Facts ▶ Quick Tables

Print / D

QT-PL. Race, Hispanic or Latino, and Age: 2000

Geographic Area: **Fort Bridger CDP, Wyoming**

NOTE: Data not adjusted based on the Accuracy and Coverage Evaluation. For information on confidentiality protection, sampling error, nonsampling error, and definitions see <http://factfinder.census.gov/home/en/datanotes/expplu.html>.

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
RACE				
Total population	400	100.0	285	100.0
One race	398	99.5	283	99.3
White	388	97.0	278	97.5
Black or African American	0	0.0	0	0.0
American Indian and Alaska Native	5	1.3	3	1.1
Asian	0	0.0	0	0.0
Native Hawaiian and Other Pacific Islander	0	0.0	0	0.0
Some other race	5	1.3	2	0.7
Two or more races	2	0.5	2	0.7
HISPANIC OR LATINO AND RACE				
Total population	400	100.0	285	100.0
Hispanic or Latino (of any race)	11	2.8	9	3.2
Not Hispanic or Latino	389	97.3	276	96.8
One race	388	97.0	275	96.5
White	379	94.8	271	95.1
Black or African American	0	0.0	0	0.0
American Indian and Alaska Native	5	1.3	3	1.1
Asian	0	0.0	0	0.0
Native Hawaiian and Other Pacific Islander	0	0.0	0	0.0
Some other race	4	1.0	1	0.4
Two or more races	1	0.3	1	0.4

(X) Not applicable

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File, Matrices PL1, PL2, PL3, and PL4.

ATTACHMENT 3

Basic Facts Quick Tables

QT-PL. Race, Hispanic or Latino, and Age: 2000
 Geographic Area: **Woodruff town, Utah**

NOTE: Data not adjusted based on the Accuracy and Coverage Evaluation. For information on confidentiality protection, sampling error, nonsampling error, and definitions see <http://factfinder.census.gov/home/en/datanotes/expplu.html>.

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
RACE				
Total population	194	100.0	111	100.0
One race	194	100.0	111	100.0
White	194	100.0	111	100.0
Black or African American	0	0.0	0	0.0
American Indian and Alaska Native	0	0.0	0	0.0
Asian	0	0.0	0	0.0
Native Hawaiian and Other Pacific Islander	0	0.0	0	0.0
Some other race	0	0.0	0	0.0
Two or more races	0	0.0	0	0.0
HISPANIC OR LATINO AND RACE				
Total population	194	100.0	111	100.0
Hispanic or Latino (of any race)	0	0.0	0	0.0
Not Hispanic or Latino	194	100.0	111	100.0
One race	194	100.0	111	100.0
White	194	100.0	111	100.0
Black or African American	0	0.0	0	0.0
American Indian and Alaska Native	0	0.0	0	0.0
Asian	0	0.0	0	0.0
Native Hawaiian and Other Pacific Islander	0	0.0	0	0.0
Some other race	0	0.0	0	0.0
Two or more races	0	0.0	0	0.0

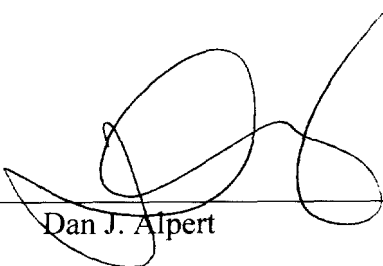
(X) Not applicable

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File, Matrices PL1, PL2, PL3, and PL4.

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on May 15, 2001 the foregoing document is being served by First Class Mail, postage prepaid, to the following persons:

Ellen Masters, Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20006



Dan J. Alpert